

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

Reply Comments of the Native Networking Policy Center

I. Introduction

The Native Networking Policy Center (NNPC) is a non-profit organization whose mission is to ensure equitable and affordable access to, and the culturally appropriate use of, telecommunications and information technology throughout Indian Country. NNPC is concerned that the Federal-State Joint Board recommendations regarding the eligible telecommunications carrier (ETC) designation process would have a negative impact on Indian Country and impose further limits on the ability of tribal governments to promote the development of telecommunications infrastructure, gain entry into the telecommunications market and determine their respective telecommunications destinies. NNPC is especially concerned that rules regarding ETC designations will be put in place without sufficient tribal government consultation and without sufficient consideration of the public interest in Indian Country.

Therefore, NNPC supports the comments of the National Tribal Telecommunications Association (NTTA) regarding the need to reform the ETC designation process as it is applied to Indian Country.¹ Furthermore, NNPC recommends that a standardized process for government-to-government consultation between tribal governments and the Federal Communications Commission (FCC) be established and implemented in a manner that is consistent with the goals of the FCC tribal policy statement.²

¹ *Comments of the National Tribal Telecommunications Association*, CC Docket No. 96-45, August 6, 2004.

² In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207, June 23, 2000.

II. ETC Designation Process

A. Tribal Authority Must Be Recognized During ETC Designation Process

The FCC's commitment to consulting with tribes on a government-to-government basis regarding pending ETC designations on tribal lands must be substantiated. In the very least, NNPC believes that the FCC should implement the recommendations of NTTA regarding the manner in which tribal governments and tribal regulatory authorities are notified during the ETC designation process:

NTTA respectfully submits, that the FCC further implement its Policy Statement by modifying the current ETC designation process to include the following requirements that: 1) applicants seeking ETC status on tribal lands provide copies of their petitions to the affected tribal government(s) and the tribal regulatory authority at the time of filing; 2) the FCC provide public notice of the comment cycle on any ETC application filed for its consideration to the affected tribal government(s) and the tribal regulatory authority by overnight express mail; and 3) state commissions provide public notice of the comment cycle on any ETC application filed for their consideration to the affected tribal government(s) and the tribal regulatory authority by overnight express mail.³

Furthermore, NNPC believes that the FCC should engage in government-to-government consultations with affected tribal governments and tribal regulatory authorities within 30 days of such notification. The only way the FCC can determine whether or not an ETC designation is in the best interests of a tribal government, or is in the best public interest of tribal communities, is through extensive government-to-government consultation.

B. The Public Interest of Affected Indian Nations Must Be Carefully Considered

NNPC believes that the value of increased competition, by itself, is not sufficient to satisfy the public interest test on tribal lands. Therefore, NNPC agrees with the comments of NTTA, that the FCC must rigorously examine the public interest of affected Indian Nations before making an ETC designation.⁴ Furthermore, NNPC urges the FCC to recognize that the most appropriate and accurate means of examining the public interest of an Indian Nation is through government-to-government consultation.

Any rigorous examination of the public interest on tribal lands should carefully consider the affected tribe's plans for economic development, which may include establishing a tribally-owned telephone company. Making ETC designations without taking into consideration the economic development intentions of tribes could undermine the opportunities of tribes to enter local telecommunications markets.

³ Comments of the National Tribal Telecommunications Association, CC Docket No. 96-45, August 6, 2004, p. 4.

⁴ Id., p. 7-8.

In addition, using a set of standardized criteria to examine the public interest, such as coverage, network congestion, Universal Service funding financial reports, customer service, and equal access should be viewed as a first step on tribal lands. Any adopted set of standardized criteria should be appropriately contextualized to address the unique public interests of tribes.

For instance, due to the low telephone penetration rates in Indian Country, ETC designations should require that ETCs provide a five year investment plan to serve unserved communities. Likewise, due to insufficient community outreach pertaining to Enhanced Lifeline and Link-Up on the part of ETCs and the resulting underutilization of these programs, ETCs should be required to provide a community outreach plan for Enhanced Lifeline and Link-Up programs that: 1) is comprehensive; 2) is culturally relevant; 3) provides a community organizing strategy that engages community leaders.

III. Toward a Standardized Process for Government-to-Government Consultation

One of the biggest challenges for improving the status of telecommunications—and the application of Universal Service Fund programs—in Indian Country is garnering sufficient tribal input in FCC policy making proceedings. Sufficient tribal input is currently, and historically, lacking. The FCC has relied, primarily, upon the input of tribally owned telephone companies rather than a majority of tribal governments due to the lack of participation on the part of tribal governments. Since there are only eight tribally owned telephone companies, the concerns of the vast majority of Indian Country have not been adequately considered. As a result the FCC has been unable to gain a clear and balanced understanding of the telecommunications needs of Indian Country and the impacts of FCC policies on Indian Country.

One of the primary reasons for this problem is the lack of a meaningful strategy by which the FCC consults with Indian Nations, both collectively in intertribal settings and individually on a government-to-government basis.

The FCC *Statement of Policy Establishing a Government-to-Government Relationship* was an important and necessary first step toward respecting the sovereignty of Indian Nations and the unique relationship that Indian Nations have with the federal government. Section 3, paragraphs 1-3 of this document, though brief and limited in scope, provided a clear justification for the need for improved government-to-government consultation between Indian Nations and the FCC.⁵ Likewise, the nine goals outlined in Section 3 provide a compelling and admirable means of reaffirming the FCC's commitment to upholding the federal trust responsibility and government-to-government relations.

⁵ In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, *Policy Statement*, FCC 00-207, June 23, 2000.

Unfortunately, this policy statement has no teeth; it has yet to be implemented as a matter of practice in a satisfactory manner; and no mechanism has been established to ensure its enforcement. In sum, there has been no substantial follow through on a potentially effective policy.

Therefore, NNPC urges the FCC to work with tribal governments to devise a plan to implement and enforce the *Statement of Policy Establishing a Government-to-Government Relationship* in a meaningful way that benefits Indian Nations by promoting increased consultation between Indian Nations and the FCC, and holding the FCC accountable to the goals described in the statement of policy.

NNPC recommends that the FCC utilize the following strategy for developing appropriate implementation and enforcement plans:

- 1) Solicit comments and consultation with tribal governments for the purpose of establishing implementation and enforcement plans. Publish the request in the Federal Register, post it on the FCC.Gov/Indians website, and mail it to tribal governments.
- 2) Hold a hearing at the next ITI meeting to garner sufficient tribal input.
- 3) Establish a steering committee comprised of tribal representatives to guide the development of the implementation and enforcement plans.
- 4) Report on progress made at National Congress of American Indians (NCAI) telecommunications subcommittee meetings and ITI meetings.
- 5) Publish the final draft of the plan in the Federal Register, post it on the FCC.Gov/Indians website, and mail it to tribal governments.

Furthermore, the FCC Indian Telecommunications Initiative (ITI) should be reformed as a means of improving tribal input and government-to-government consultations. ITI has not been utilized to reach its full potential as a means of building the public record pertaining to specific proceedings impacting Indian Country, or improving upon government-to-government consultations. NNPC contends that ITI should:

- 1) Convene meetings more strategically, so that they correspond with open FCC proceedings that impact Indian Country.
- 2) Set aside one full day to conduct hearings relative to open FCC proceedings impacting Indian Country as a means of garnering meaningful input and building the public record. The record of these hearings should be published in the Federal Register, posted on the FCC.Gov/Indians website and mailed to tribal governments.
- 3) Continue the practice of holding roundtable discussions, however, such discussions should be guided by an agenda that is focused on specific issues pertaining to recent, future and open FCC proceedings. Furthermore, the roundtable discussions should be facilitated by a tribal representative or tribal leader, rather than FCC staff.

IV. Conclusion

NNPC urges the FCC to reform the ETC designation process, as it is applied to Indian County, by taking necessary steps to improve government-to-government consultation with tribes affected by ETC designations and perform a rigorous examination of the public interest on tribal lands. Furthermore, NNPC recommends that a standardized process for government-to-government consultation between tribal governments and the Federal Communications Commission (FCC) be established and implemented in a manner that is consistent with the goals of the FCC tribal policy statement.

Respectfully submitted,
By: [electronically filed]
Native Networking Policy Center
1640 Stowe Road
Reston, VA 20194